

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 09-0630

Lawrence A. Anderson
Attorney at Law, P.C.
300 4th Street North
P.O. Box 2608
Great Falls, Montana 59403-2608
Telephone (406) 727-8466
Fax (406) 771-8812
E-Mail laa@silverstatelaw.net

Attorney for Plaintiff-Appellant

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

SHANE BUCHER,

Plaintiff-Appellant

-vs-

PATRICK HAROLD HUGHES,

Defendant-Appellee.

**APPELLANT'S RESPONSE
TO APPELLEE HUNT'S
MOTION TO DISMISS
APPEAL**

INTRODUCTION

This appeal is from a civil judgment arising out of a criminal proceeding. Appellant is a party named on the judgment. Respondent nevertheless contends that he has no standing to bring the appeal.

Appellant is a crime victim, who was physically maimed by the Respondent. His appeal, however, is not from the criminal proceedings, but from the civil

judgment. As explained below, Appellant clearly has standing to maintain this appeal.

STATEMENT OF FACTS

Appellant Shane Bucher's leg was cut off through the recklessness of Respondent Patrick Hughes. Hughes was an off-duty sheriff's deputy. He drove a motorcycle down Main Street in Shelby at high speed while intoxicated, struck Bucher and severed his leg. (See Affidavit of Lawrence Anderson, ¶¶ 4-5, Ex. 2)

Hughes was charged with various criminal offenses, including Negligent Vehicular Assault. (Id., ¶ 3, Ex. 1) He pled guilty and was given a six-year suspended sentence. He also was ordered to pay restitution in the amount of \$2,718.00 for Bucher's medical expenses and \$34,415.70 for his lost wages. (Id., ¶ 6, Ex. 3)

The criminal sentencing order was entered on June 5, 2003. (Id.) In the subsequent six years, Hughes paid Bucher only \$6,970. (Id., ¶ 6, Ex. 4) Because of these minimal payments, the State moved to revoke the suspended sentence in May 2009. (Id., ¶ 7, Ex. 5)

Hearing were held in June and July 2009. Hughes argued that he had made a good-faith effort to pay, and opposed revocation of his sentence. He urged the court to enter a civil judgment in Bucher's favor instead. (See Transcript of Hearing of June 29, 2009)

The district court denied the State's motion to revoke the suspended sentence. It directed Bucher's counsel to submit a proposed form of judgment. Bucher's counsel proposed a form reciting the full amount which had been ordered on the date of sentencing:

Judgment is hereby entered against Defendant Patrick Harold Hughes in the amounts of \$34,415.70 and \$2,718.00 as of June 5, 2003.

(See Anderson Aff., ¶8, Ex. 7 (emphasis added))

The court rejected Bucher's proposed form of judgment, and entered a judgment proposed by Hughes. The judgment (captioned "Shane Bucher, Plaintiff vs. Patrick Harold Hughes, Defendant") was in the amount of \$29,463.70 (See id., ¶ 8, Ex. 8)

This form of judgment deprives Bucher of substantial interest which should have begun to accrue on the date of sentencing in June 2003.

ISSUE

DOES APPELLANT HAVE STANDING TO CONTEST THE TERMS OF THE CIVIL JUDGMENT ENTERED IN HIS NAME?

ARGUMENT

APPELLANT HAS STANDING TO CONTEST THE TERMS OF THE JUDGMENT AND TO PROSECUTE THIS APPEAL.

A. The Civil Enforcement Statute

Restitution orders are entered in criminal proceedings on a mandatory basis.

See § 46-18-241, MCA (“a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained a pecuniary loss”). Restitution is governed by detailed statutes intended to ensure compensation for victims. See §§ 46-18-241 to 249, MCA.

The last of these statutes expressly provides for enforcement by means of civil proceedings. It recites, in part:

46-18-249. Civil actions by victim. (1) The total amount that a court orders to be paid to a victim may be treated as a civil judgment against the offender and may be collected by the victim at any time, including after state supervision of the offender ends, using any method allowed by law, including execution upon a judgment, for the collection of a civil judgment.

...

(emphasis added)

Appellant’s argument on the merits of this appeal is based upon the foregoing language. The trial court failed to grant judgment as to the “total amount” of restitution ordered. It thereby deprived Appellant of judgment interest accruing on that amount from its entry in June 2003 (a “method allowed by law ... for collection of a civil judgment”).

Accordingly, this appeal arises from a civil proceeding, both as a matter of form and as a matter of substance. The underlying criminal proceedings and the trial court’s actions therein are not at issue.

B. Standing: General Principles

“Standing” is the threshold justiciability requirement that a plaintiff have a

personal stake in a particular case. *Ballas v. Missoula Board of Adjustment*, 2007 MT 299, 340 Mont. 56, 172 P.3d 1232, ¶ 14. It involves two criteria:

To establish standing to bring suit, the complaining party must clearly allege a past, present, or threatened injury to a property or civil right. [citation omitted] Further, the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party.

Board of Trustees, Cut Bank Public Schools v. Cut Bank Pioneer Press, 2007 MT 115, 337 Mont. 229, 160 P.3d 482, ¶ 15 (emphasis added).

These criteria clearly are met in the present case. Appellant seeks to redress an “injury to a property right” (judgment interest) arising from the civil judgment at issue. This injury is distinct from any injury to the general public.

Appellant, as a crime victim, is entitled to mandatory restitution from Hughes. § 46-18-241, MCA. The “total amount” of that restitution is collectible as a civil judgment. See § 46-18-249, MCA. This collectability entails judgment interest accruing “from the time [the restitution order] was rendered or made.” See § 25-9-204, MCA.

The form of judgment entered by the trial court deprives Appellant of a substantial amount of judgment interest. Thus, Appellant clearly has standing to contest the form of the judgment and to prosecute this appeal.

C. Standing: Respondent’s Cases

Respondent cites several state and federal cases denying crime victims

standing to challenge various sentencing procedures. These cases clearly are distinguishable, insofar as the judicial acts at issue dealt with criminal procedure, not with the form of a civil judgment.

The most recent federal case which Respondent cites, however, strongly supports Appellant's position on this appeal. *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004) arose in the wake of the federal Mandatory Victims Restitution Act (MVRA). This statute modified an older law (the Victim and Witness Protection Act (VWPA)) referred to in other cases cited by the Respondent.

As *Perry* explains, the MVRA “reflects a dramatically more ‘pro-victim’ congressional attitude” than did the VWPA. 360 F.3d at 524. Like Montana’s own statute, the MVPA made restitution mandatory, and gave victims various rights for pursuing collection. See id.

In *Perry*, a victim sought to enforce a restitution order by means of a judgment lien. The defendant sought to release the lien through a motion in the underlying criminal proceedings. The district court released the lien, the victim appealed, and (as in the present case), the defendant challenged the victim’s standing.

Perry held that the victim had standing in terms directly pertinent here. It stated, in part: “this is not an ordinary appeal from a criminal judgment because it involves a civil matter initiated by a third party.” Id. at 523. It held that barring an

appeal would “create potentially significant due process problems.” Id. at 526.


And it stressed that “the differences between the VWPA and the MVRA” distinguished older cases which had barred appeals.

A similar analysis is warranted here. As in *Perry*, this appeal presents a civil issue, not a criminal issue. This Court should hold that Appellant has standing to vindicate his right to interest on a civil judgment. Thus, it should deny the Motion to Dismiss.

Conclusion

For the foregoing reasons, Appellee’s motion should be denied.

DATED this 20 day of January 2010.



Lawrence A. Anderson
P.O. Box 2608
Great Falls, MT 59403-2608
Attorney for Plaintiff-Appellant

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following by
mail, hand delivery, Federal Express, or facsimile transmission, as indicated:

- ☒ U.S. Mail
- ☐ Federal Express
- ☐ Hand Delivery
- ☐ Facsimile transmission

Joslyn Hunt
Chief Appellate Defender
Office of the State Public Defender
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

DATED this 20 day of January 2010.



Treacie Burback, Legal Assistant

c: Shane Bucher